



HIGHLIGHTS OF 2016 MINN. LAWS CHAPTER 160

Minnesota Sentencing
Guidelines Commission
Nate Reitz, Executive Director

HOW CHAPTER 160 ALTERED MSGC-ADOPTED DRUG-SENTENCING REFORM PROPOSAL

<p>What was not altered</p> <ul style="list-style-type: none"> New aggravating and mitigating factors Drug Offender Grid created New durations for 1st Degree sale adjusted to reflect historical data Durations for 1st Degree possession shorter than existing durations Stayed sentences for 2nd Degree, criminal history scores of 0 or 1 	<p>What was altered</p> <ul style="list-style-type: none"> 1st Degree possession durations longer than proposed <ul style="list-style-type: none"> ▪ Reunited with 1st Degree sale 2nd Degree durations not reduced Executed sentence for 2nd Degree, criminal history score of 2
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June 8, 2016

MINNESOTA SENTENCING GUIDELINES COMMISSION 2

2015 GUIDELINES SENTENCING GRID

		0	1	2	3	4	5	6+
1°	9	86	98	110	122	134	146	158
2°	8	48	58	68	78	88	98	108
(DWI)	7	36	42	48	54	60	66	72
3°	6	21	27	33	39	45	51	57

June 8, 2016

MINNESOTA SENTENCING GUIDELINES COMMISSION 3

2016 MSGC PROPOSED DRUG OFFENDER GRID

		0	1	2	3	4	5	6+
(Meth mfg.)	D10	86	98	110	122	134	146	158
1° Sale	D9	65	75	85	95	105	115	125
1° Possess	D8	48	58	68	78	88	98	108
2°	D7	36	42	48	54	60	66	72
3°	D6	21	27	33	39	45	51	57

June 8, 2016

MINNESOTA SENTENCING GUIDELINES COMMISSION 4

CHAPTER 160 DRUG OFFENDER GRID

		0	1	2	3	4	5	6+
Agg. 1°	D9	86	98	110	122	134	146	158
1° (All)	D8	65	75	85	95	105	115	125
2°	D7	48	58	68	78	88	98	108
3°	D6	21	27	33	39	45	51	57

June 8, 2016

MINNESOTA SENTENCING GUIDELINES COMMISSION 5

CHAPTER 160 THRESHOLD CHANGES

Cocaine and Meth thresholds raised for all 1st and 2nd Degree, some 3rd Degree—

- 1st Degree Sale: 10 g → 17 g; 10 g with firearm or 2 aggravating factors (defined below)
- 1st Degree Possession: 25 g → 50 g; 25 g with firearm or 2 aggravating factors
- 2nd Degree Sale: 3 g → 10 g; 3 g with firearm or 3 aggravating factors
- 2nd Degree Possession: 6 g → 25 g; 10 g with firearm or 3 aggravating factors
- 3rd Degree Possession: 3 g → 10 g

Marijuana thresholds lowered for 1st and 2nd Degree

- 1st Degree Sale: 50 kg → 25 kg
- 1st Degree Possession: 100 kg → 50 kg or 500 plants
- 2nd Degree Sale: 25 kg → 10 kg
- 2nd Degree Possession: 50 kg → 25 kg or 100 plants

June 8, 2016

MINNESOTA SENTENCING GUIDELINES COMMISSION 6

GROSS MISDEMEANOR 5TH DEGREE POSSESSION

Heroin

Possession of 0.05 g (50 mg) or more remains a felony

With no prior Chapter 152 convictions, possession of less than 0.05 g (50 mg) is a gross misdemeanor

All other schedule I through IV controlled substances

The following remains a felony—

- Possession of 0.25 g (250 mg) or more, or
- Possession of more than 1 dosage unit, if packaged in dosage units

With no prior Chapter 152 convictions, the following is a gross misdemeanor—

- Possession of less than 0.25 (250 mg), or
- Possession of 1 dosage unit or less, if packaged in dosage units

NEW AGGRAVATED 1ST DEGREE OFFENSE

Must commit one of the following 1st Degree offenses with 100 grams or 500 dosage units of the drug in question:

- Possession of cocaine, heroin, or meth, or
- Sale any 1st Degree substance except marijuana

Must commit the offense while using or possessing a firearm, or while two aggravating factors are present

New offense is ranked at D9 on the Chapter 160 Drug Offender Grid

Mandatory executed sentence at Guidelines duration

- May not use the lower part of the Guidelines range (15 percent below presumptive fixed duration)
- Statute contains no waiver provision

“AGGRAVATING FACTORS”

“Violent crime” conviction in 10 years

Offense committed for benefit of gang

Separate acts in three counties

Interstate/international transfer involved

Three separate sale transactions

Evidence of high position in drug distribution hierarchy

Used position/status (of trust, e.g.)

Sale to child/vulnerable adult

In school zone, park zone, prison, or treatment facility

Evidence of quantities substantially larger than threshold

Not identical to MSG § 2.D.3.b(5) list

Not identical to Minn. Stat. § 244.10, subd. 5a(5), list

CHANGES TO MANDATORY MINIMUM PENALTIES

New Aggravated 1st Degree offense (described above)

High-Quantity 1st Degree Cases: Mandatory Guidelines sentence, no lower part of range, for committing, with 100 grams or 500 dosage units of the drug at issue—

- 1st Degree sale of any substance except marijuana (no waiver), or
- 1st Degree possession of cocaine, heroin, or meth (waivable if no prior 1st, 2nd, or 3rd Degree)

Subsequent Controlled Substance Offenses: Mandatory minimums continue—

- But only for 1st and 2nd Degree cases, and
- Only 1st or 2nd Degree priors qualify

Firearms: May not waive § 609.11 mandatory minimum for 1st or 2nd Degree sale if defendant/accomplice used or possessed, on person or in immediate reach, a firearm

ELIMINATION OF THE LOWER RANGE

New 1st Degree mandatory minimums invoke the “presumptive fixed sentence under the Minnesota Sentencing Guidelines”

- Offenders “shall be committed to the commissioner of corrections for not less than [65 months for high-threshold 1st Degree; 86 months for Aggravated 1st Degree] or the **presumptive fixed sentence under the Minnesota Sentencing Guidelines**, whichever is greater, nor more than 40 years ...”

“Presumptive fixed sentence” is understood to be the single Guidelines presumed sentence before the upper and lower ranges are applied (“center of the box”).

- Minnesota Sentencing Guidelines § 1.B.13.b & c.
- Minn. Stat. § 244.09, subd. 5(2).
- This understanding is corroborated by use of 65- and 86-month durations

The lower range is therefore understood to be inapplicable when Minn. Stat. § 152.021, subd. 3(c) or 3(d), applies.

MINN. STAT. § 609.11, SUBD. 5A (STACKING MANDATORY MINIMUMS)

Old law: § 609.11 mandatory minimum (e.g., 3 years for firearm) is made consecutive to chap. 152 mandatory minimum (e.g., 4 years for subsequent 1st Degree drug crime). Resulting mandatory minimum (e.g., 7 years, is still likely less severe than Guidelines presumption (e.g., 86 months)

But some new chap. 152 mandatory minimums are much longer (e.g., 65 & 86 mo.)

So, new law stacks only the following chap. 152 mandatory minimums with § 609.11:

- Subsequent controlled substance convictions (as before)
- Aggravated 1st Degree because of two aggravating factors

These Chap. 152 mandatory minimums are excluded from stacking:

- Aggravated 1st Degree because of firearm
- High-quantity (100 g or 500-dose) 1st Degree offenses

CHANGES TO MINN. STAT. § 152.18

§ 152.18 no longer qualifies a subsequent offense for mandatory-minimum penalty

3rd Degree possession offenses are made eligible for § 152.18 disposition

Prior felony drug convictions and § 152.18 dispositions still disqualify

§ 152.18 disposition becomes mandatory for eligible 5th Degree possession cases with—

- No prior felony convictions and
- No prior gross misdemeanor 5th Degree convictions

OTHER CHANGES

Expands conditional release program (§ 244.0513)

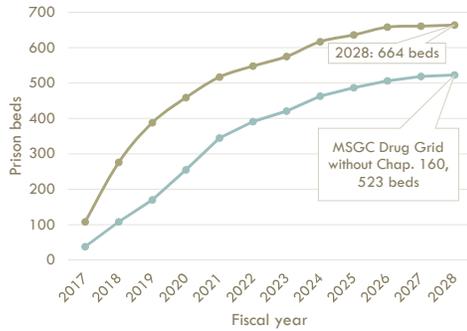
Requires MSGC to track the impact of the new law and other changes to drug laws

- Will require hiring additional 0.5 FTE research analyst

Establishes community justice reinvestment account, funded at \$461,000 annually, to fund local governments and nonprofits in programs for CD/MH treatment, supervision improvement, and reducing recidivism of drug offenders (including drug court)

LONG-TERM, CHAPTER 160 IS ESTIMATED TO SAVE 664 PRISON BEDS

Estimated timing of prison-bed savings



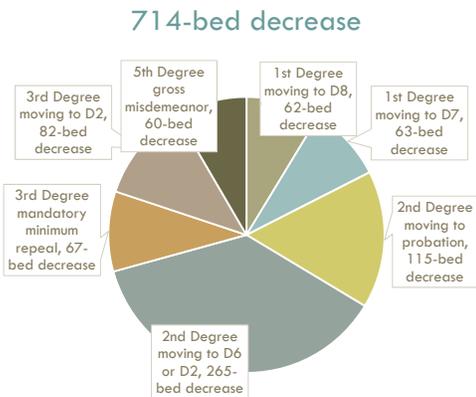
Other estimated impacts

Chapter 160 is projected to reduce the number of low-level drug offenders receiving felony sentences by 337 offenders annually

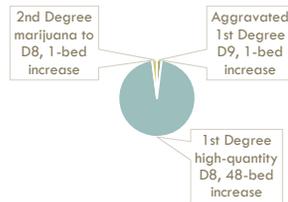
This is expected to alleviate some of the existing racial disparity in the American Indian felony population

Also, the prison-bed reductions are expected to alleviate some of the existing racial disparity in the Hispanic prison population

SOURCES OF ESTIMATED BED SAVINGS & COST



50-bed increase



Unknowns:

- Aggravating factors
- Changes in prosecutorial and judicial behavior